

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 17-10692

4 - - - - - x

5 In the Matter of:

6
7 BE MY GUEST, LLC,

8
9 Debtor.

10 - - - - - x

11
12 U.S. Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15
16 April 27, 2017

17 3:11 PM

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20
21 B E F O R E :

22 HON SEAN H. LANE

23 U.S. BANKRUPTCY JUDGE

24
25 ECRO: F. FERGUSON

1 Hearing re: Initial Case Conference

2

3 Hearing re: Doc. #10 Motion to Assume Leases Or Executory
4 Contracts

5

6 Hearing re: Doc. #18 Memorandum Endorsed Order Directing
7 Principals And/Or Controlling Persons Appear At Initial Case
8 Conference

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10 Hearing re: Memorandum Endorsed Order Regarding Letter
11 Requesting Mr. Karam's Participation by Court Call

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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21
22 ALSO PRESENT TELEPHONICALLY:

23
24 OSWALDO KARAM

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P R O C E E D I N G S

THE COURT: We are here this afternoon regarding
Be My Guest LLC, Chapter 11 case. So without further ado,
let me get appearances from counsel and then you can bring
me up to speed on where we are.

MR. PICK: Thank you, Judge. Douglas Pick, Pick &
Zabicki, counsel to the Debtor. And to my right, I have Mr.
John Horan.

MR. HORAN: Counsel for Oswaldo Karam.

THE COURT: All right. Good afternoon.

MR. PICK: And Mr. Lawrence Gordon.

MR. GORDON: My name's Lawrence M. Gordon. I
represent Lucy Balan and Nello Balan, individually.

THE COURT: All right. Good afternoon.

MR. PICK: Also, we have in the court with us Lucy
Balan --

THE COURT: Good afternoon.

MR. PICK: And behind her, her father, Nello
Balan.

THE COURT: All right. Good afternoon.

MR. PICK: On the phone we have Oswaldo Karam.

MR. KARAM: Good afternoon.

THE COURT: All right. Good afternoon, sir.

MR. PICK: And an interpreter.

THE COURT: All right.

1 MR. KARAM: Good afternoon, sir, Your Honor.

2 THE COURT: All right. And I am seeing just a few
3 more counsel.

4 MR. NASH: Yes, Your Honor. Kevin Nash for 8
5 West.

6 MR. GOODMAN: Good afternoon. Brett Goodman with
7 Trettman Sanders on behalf on the landlords, 14 East 58th,
8 LLC.

9 THE COURT: All right. So this hearing was
10 originally scheduled for 2:00. It is now almost 3:15.
11 That's because there's been some discussions in the hallway,
12 and I don't know anything about those discussions other than
13 what I can see in the cameras where people are having
14 discussions in the hallway. So you can get me up to speed
15 on where we are and what's the next logical step going
16 forward.

17 MR. PICK: Well, Your Honor, thank you for being
18 so patient and allowing us to talk in the hallway. In the
19 hallway, Mr. Horan and Mr. Gordan exerted substantial
20 efforts towards settling the issue. And I give them credit
21 for all the work and the results of that effort.

22 It was my understanding that as a result of their
23 efforts, there was a deal.

24 THE COURT: Do me a favor. Since there's somebody
25 on the phone, make sure that that microphone is pointing

1 towards you just so you don't drop off.

2 MR. PICK: Sure.

3 THE COURT: All right.

4 MR. PICK: In the hallway, it was my understanding
5 that there was a deal. The deal was shared with Mr. Karam.
6 Mr. Karam agreed to the deal. We started papering out the
7 terms of the deal to present to Your Honor, and then we hit
8 a snag. And the snag involved whether or not the landlord
9 has any rights to the return of the lease. As a result of
10 that concern, the settlement agreement that we had made in
11 the hallway has been withdrawn as a result of a belief that
12 the landlord's going to make a higher and a better bid
13 directly to 8 West 58th Street, although the lease is in our
14 name.

15 We believe that the settlement will meet the
16 standard of proof if presented to Your Honor arising about
17 the lowest level of reasonableness and in such an amount
18 that Your Honor will approve it, including the terms. But
19 as a result of the landlord's demands, 8 West 58th Street
20 has decided to withdraw the settlement unless we now pay
21 them more money.

22 THE COURT: All right. Well, let me first off do
23 this. Obviously I have a few things in front of me. I have
24 for today what I technically have in front of me is a motion
25 to assume the lease. There's obviously other things that

1 are in front of me in the 8 West case, and there's things
2 that have happened thus far in that case and in this case.
3 You all are having discussions which are really relating to
4 both cases and trying to reach a resolution. Those
5 discussions are a sensible thing to do as these cases are
6 both headed towards a cliff in trail issue and order.

7 What I have to be careful is to make sure
8 everybody's comfortable discussing things with me in a way
9 that they feel like they can do so and they're comfortable
10 doing so even though I may have to decide, for example, the
11 lease motion or something else. So I don't want to feel
12 like anybody feels like they're -- that they have no option
13 or they're uncomfortable having me hear things that deal
14 with settlement that may be hard not to do if we go any
15 further beyond your very carefully worded statement.

16 So I want to make sure that nobody has any concern
17 about that. Obviously, there's a lot of history in the
18 case, and so all of that is perfectly fine to talk about,
19 but to the extent people start talking about things like the
20 terms of settlement before they're in front of me, I --
21 again, I'm very cautious about that.

22 So I'd like to hear anything anybody has to say
23 about that. I'm happy to, if people are comfortable, do
24 what is best for the case if people agree what that is. But
25 I don't want anyone to feel like they don't have an option

1 or that this is an issue I don't take very seriously. So
2 let me first hear from your clients your views about that.

3 MR. GOODMAN: Your Honor, we're open to having a
4 discussion with Your Honor either on the record or off the
5 record with respect to the terms. I think the terms of this
6 particular case as related to 8 West 58th Street are such
7 that they should be brought to Your Honor's attention since
8 Your Honor has continually insisted that we make our best
9 efforts to purge the contempt orders. And I think we are
10 there.

11 THE COURT: All right. So let me hear from Mr.
12 Nash and from the landlord and then we'll figure out what we
13 can do and what we can't do and what makes sense going
14 forward.

15 MR. NASH: Your Honor, I have absolutely no
16 concerns, but I think Mr. Pick has put the cart before the
17 horse. The -- and I'm not going to get into the specifics,
18 but the discussions I had with Mr. Gordon was on a proposal
19 to settle this matter. Now Mr. Gordon understood and we
20 discussed it very expressly that I would have to caucus the
21 interested parties on my side. I didn't have the ability to
22 do that. There's more than one party involved.

23 MR. KARAM: (indiscernible).

24 THE COURT: Hold on. I can't listen to two folks
25 at the same time, so you just have to wait a second, Mr.

1 Karam. Let me hear from Mr. Nash and I guess your counsel
2 here in the room. So well, I'll hear from everybody who
3 needs and wants to be heard from, so don't worry about that.
4 So let me hear from Mr. Nash.

5 MR. NASH: So we left it that I would speak to the
6 people on my side and see what their views are of what we
7 discussed. The landlord is here. The landlord has an
8 interest in both cases and made a proposal that I shared
9 with Mr. Gordon and Mr. Pick that is a better proposal for
10 my estate. I am a fiduciary. Without getting into numbers
11 --

12 THE COURT: Let me back up for a second. We could
13 probably spend some time talking around these issues. Does
14 -- what's the next step? Does it make sense to go off the
15 record --

16 MR. NASH: Yes.

17 THE COUR: -- and have a conversation?

18 MR. NASH: Yes.

19 THE COURT: All right. So let me ask the
20 landlords' counsel if you see that as the next logical step.

21 MR. GOODMAN: I'm happy to go off the record, Your
22 Honor. I'm free to talk about --

23 THE COURT: Where we are.

24 MR. GOODMAN: -- what transpired and where we are.

25 THE COURT: All right.

1 MR. GOODMAN: I would just say for the record
2 before we get into that this has been a -- as everyone here
3 knows, the track of litigation between two parties that have
4 brought my client back into this case on more times than I
5 can count. And quite honestly, we didn't create this
6 situation. We were presented with a proposal that was made
7 to the Debtor. And given what has transpired, we made our
8 own proposal.

9 THE COURT: All right.

10 MR. GOODMAN: And that's where we are.

11 THE COURT: All right. So as to process though, I
12 think am I right in and I'm just saying everybody thinks it
13 makes sense to go off the record and to chat, have a
14 chambers conference and see if we can make some progress to
15 bring these matters to some sort of a solution?

16 MR. GOODMAN: With one caveat, Your Honor --

17 THE COURT: Sure.

18 MR. GOODMAN: -- if it's acceptable to you and to
19 the other parties, I have in house counsel for my client
20 here, and I would like them to participate in--

21 THE COURT: They --

22 MR. GOODMAN: -- this conference.

23 THE COURT: Yeah, that seems perfectly
24 appropriate.

25 MR. GOODMAN: Thank you.

1 THE COURT: That seems perfectly -- I mean we can
2 do it here. I don't know that other than the U.S. Trustee's
3 officers anybody here who is not -- who wouldn't be in the
4 room where it happens, the Court Hamilton. So we could do
5 it here or we could do it inside. So all right. So with
6 that said, we can go -- all right. Well, let me see.
7 Before we go off the record, anybody else want to weigh in
8 on anything else?

9 All right. And I see the U.S. Trustee's Office is
10 here. I asked chambers to call their office and to say
11 nothing more than we think you may have an interest in the
12 case. They obviously pay attention to things dealing with
13 bankruptcy system and also like to know when there are cases
14 that are sort of about the integrity of the bank system. So
15 that was always communicated to their office. So sometimes
16 we do that and they really don't have a whole lot of idea
17 why we invited them, so.

18 So with that said, I'll just explain that there's
19 a history to this case that the U.S. Trustee's Office may or
20 may not be very familiar with.

21 MR. SCHWAETZBERG: Paul Schwaetzberg with the U.S.
22 Trustee's Office. I'm well aware of this, Your Honor.

23 THE COURT: All right. So thank you. So but that
24 was all that was said to their office. It was a one-line
25 sentence on the phone that you might want to come because

1 essentially this is a different case, but somewhat of a
2 sequel. So I see someone rising wish to be heard.

3 MR. GORDON: Your Honor, I'm here to represent Mr.
4 Karam. I don't think he should be kept on the phone waiting
5 while we're talking. I don't think it's necessary.

6 THE COURT: Well, the reason why I said we might
7 be here is to the extent that we're here as opposed to my
8 chambers. He can listen in.

9 MR. GORDON: All right. No, (indiscernible).

10 THE COURT: So that may be useful.

11 MR. GORDON: Yeah. Thank you.

12 THE COURT: And certainly at a certain point, if
13 we're going to do something else and maybe it makes sense to
14 cut him loose. But we'll -- it's a point well taken.
15 So let's go off the record with that and --

16 (Whereupon these proceedings were concluded at
17 3:22 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

Sonya Ledanski
Hyde

Digitally signed by Sonya Ledanski Hyde
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Date: May 19, 2017